

Assembly Bill No. 807

CHAPTER 963

An act relating to water.

[Approved by Governor October 10, 1999. Filed
with Secretary of State October 10, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 807, Keeley. Pajaro River Watershed Flood Prevention Authority.

(1) Existing law authorizes specified entities to provide flood control benefits.

This bill would enact the Pajaro River Watershed Flood Prevention Authority Act, which would grant specified powers to the Pajaro River Watershed Flood Prevention Authority, as created under the act. The bill would designate the boards of supervisors of certain counties and the boards of directors of certain local districts as "appointing authorities." The bill would require the appointing authorities to appoint members to the board of the authority, thereby imposing a state-mandated local program on those specified local boards. The bill would specify boundaries, purposes, and governance of the authority. The bill would authorize the authority to undertake flood prevention and control projects within the boundaries of the Pajaro River Watershed, as prescribed. The bill would authorize the authority to levy and collect assessments and special taxes and to sell bonds in accordance with prescribed procedures. The bill would define terms and prescribe related matters.

The provisions of the bill would become inoperative on July 1, 2000, and would be repealed on January 1, 2001, upon the occurrence of certain specified events.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) The Pajaro River Watershed consists of more than 1,400 square miles of land. Much of the watershed is prime agricultural and rangeland, providing a strong base for the region's economy. Much

of the land within the watershed provides housing, employment, recreation, and education opportunities for central coast residents and visitors from throughout the state, nation, and world.

(b) The Pajaro River Watershed includes portions of San Benito, Santa Clara, Santa Cruz, and Monterey Counties, and each of those counties is concerned about the ability of its communities to sustain a high quality of life with regard to agriculture, housing, commerce, education, and environmental protection.

(c) The Pajaro River Watershed includes numerous streams, creeks, rivers, wetlands, and estuaries that form the natural drainage system that directs rainwater to the ocean. The Pajaro River Watershed also includes numerous manmade water collection, drainage, and water disposal projects and systems that also direct rainwater to the ocean.

(d) The Pajaro River Watershed includes millions of square feet of impervious surfaces, such as roads, parking lots, homes, commercial and agricultural structures, schools and playgrounds, all of which reduce the amount of natural groundwater recharge that would otherwise be available to reduce rainwater runoff.

(e) The Pajaro River Watershed includes flood control structures, such as the Pajaro River levee system, that were designed and constructed, in most cases, nearly 50 years ago. Those flood control structures are now proving to be inadequate to protect the area's agricultural lands, commercial, residential, and public sector buildings, and environmental resources.

(f) The storms in the 1980's and 1990's have demonstrated that no jurisdiction within the Pajaro River Watershed has fully mitigated the impact of new construction on the existing drainage and flood control system.

(g) The lack of a local, intergovernmental, cooperative governance structure for the Pajaro River Watershed prevents a systematic, rational, cost-effective program of flood control and watershed management from being identified, funded, and implemented.

(h) It is the intent of the Legislature, through the enactment of this act, to provide the leadership necessary to enable the local governments and local residents of the Pajaro River Watershed to exercise appropriate powers to ensure that the human, economic, and environmental resources of the watershed are preserved, protected, and enhanced in terms of watershed management and flood protection.

SEC. 2. This section shall be known and may be cited as the Pajaro River Watershed Flood Prevention Authority Act. It is intended to supplement the Water Code and reads as follows:

PAJARO RIVER WATERSHED FLOOD PREVENTION
AUTHORITY ACT

PART 1. INTRODUCTORY PROVISIONS

CHAPTER 1. SHORT TITLE

101. This act shall be known and may be cited as the Pajaro River Watershed Flood Prevention Authority Act.

CHAPTER 2. GENERAL PROVISIONS

201. (a) The need for coordinated planning, and the implementation of strategies, for flood prevention and control within the Pajaro River Watershed, and for the protection of public and private property from those waters may appropriately lead to the creation of the Pajaro River Watershed Flood Prevention Authority.

(b) The purpose of the Pajaro River Watershed Flood Prevention Authority is to identify, evaluate, fund, and implement flood prevention and control strategies in the Pajaro River Watershed, on an intergovernmental, cooperative basis.

CHAPTER 3. DEFINITIONS

301. “Appointing authority” means each of the following:

- (a) The Board of Supervisors of the County of Monterey.
- (b) The Board of Supervisors of the County of San Benito.
- (c) The Board of Supervisors of the County of Santa Clara.
- (d) The Board of Supervisors of the County of Santa Cruz.
- (e) The Board of Directors of the Zone 7 Flood Control District.
- (f) The Board of Directors of the Monterey County Water Resources Agency.
- (g) The Board of Directors of the San Benito County Water District.
- (h) The Board of Directors of the Santa Clara Valley Water District.

302. “Authority” means the Pajaro River Watershed Flood Prevention Authority.

303. “Board” means the board of directors of the authority.

304. “Incidental expenses” includes all of the following:

(a) The cost of planning and designing projects pursuant to this act, including the costs of environmental evaluations and mitigation for those projects.

(b) The costs associated with the creation and administration of any financing arrangement authorized by this act, including, but not limited to, the costs of creating or modifying assessment or special tax districts, the costs of collecting assessments and special taxes, and the

costs arising from the issuance and administration of any bonds issued under this act.

(c) Any other expenses incidental to the construction, completion, inspection, financing, or refinancing of any authorized project, including relocation costs.

305. "Local agency" means any local public entity.

306. "Pajaro River Watershed" means the watershed area of the Pajaro River and its tributaries as described in the General Map of the Pajaro River Basin (Plate 1), U.S. Army Corps of Engineers' "Interim Report for Flood Control, Pajaro River Basin, California and Appendices," dated June 1963.

307. "Project" means the acquisition, construction, maintenance, or operation of any flood control or prevention facility authorized under this act, including, but not limited to, the acquisition of any right-of-way and payment of incidental expenses. Participation in a project includes making payments or other contributions pursuant to any contract entered into with another governmental agency that requires the other governmental agency to perform work on a project.

PART 2. ORGANIZATION AND POWERS

CHAPTER 1. MEMBERSHIP, BOUNDARIES, AND GENERAL POWERS

401. (a) A board of directors consisting of eight members shall govern the authority. Each appointing authority shall appoint one member to the board, subject to all of the following:

(1) The Board of Supervisors of Monterey County shall be represented by the supervisor from the supervisorial district that is adjacent to the Pajaro River.

(2) The Board of Supervisors of Santa Cruz County shall be represented by the supervisor from the supervisorial district that is adjacent to the Pajaro River.

(3) The Zone 7 Flood Control District shall be represented by a person who resides in the portion of Santa Cruz County that is adjacent to the Pajaro River.

(4) The Monterey County Water Resources Agency shall be represented by a person who resides in the portion of Monterey County that is adjacent to the Pajaro River.

(b) On or before July 1, 2000, the appointing authorities shall appoint the initial members of the board.

(c) At its discretion, an appointing authority may appoint one of its own members as a member of the board.

(d) To the extent feasible, it is the intent of the Legislature that the persons appointed to the board by the appointing authorities be broadly representative of the geographic, ethnic, racial, gender, and cultural diversity of the residents of the authority.

(e) To the extent feasible, it is the intent of the Legislature that the persons appointed to the board by the appointing authorities have knowledge and experience in one or more of the following fields: flood control, habitat conservation and restoration, land use planning and development, public finance economics, and water resources.

402. Except for the directors appointed to the initial board, the directors shall serve for terms of four years. The eight directors initially appointed shall determine, by lot, the expiration dates for their initial terms. The terms of four directors shall expire on January 1, 2003. The terms of the four other directors shall expire on January 1, 2005. Thereafter, each appointing authority shall appoint a person to replace its respective director. The respective appointing authority shall fill a vacancy on the board within 90 days immediately subsequent to its occurrence.

403. Each director may receive compensation in an amount set by the board, not to exceed fifty dollars (\$50) per day for each day's attendance at meetings of the board, not to exceed four meetings in any calendar month, together with actual, necessary, and reasonable expenses incurred in the performance of duties required or authorized by the board.

404. (a) At its first meeting and at its first meeting in January each year thereafter, the board shall elect a chair and vice-chair from among its members.

(b) Five members of the board shall constitute a quorum for the transaction of business.

(c) The board shall act only by ordinance, resolution, or motion. Except as specifically provided to the contrary by law, the affirmative vote of five members of the board is required on each action.

405. The board may employ and appoint any agents, officers, employees, attorneys, and consultants as may be required, prescribe their duties, fix their compensation, and prescribe the terms and conditions of their employment.

410. The boundaries of the authority shall be coterminous with the Pajaro River Watershed. On or before December 1, 2001, the board shall file a description of the exterior boundary of the authority pursuant to Chapter 8 (commencing with Section 54900) of Part 2 of Title 5 of the Government Code.

420. (a) The authority may undertake flood prevention and control projects within the Pajaro River Watershed.

(b) The authority's activities, programs, and projects shall address the protection of life, public and private property, agricultural crops, watercourses, watersheds, environmental resources, and public highways within its boundaries from damage from flood and storm waters. In addition, to the maximum extent economically feasible and consistent with its flood protection and flood management requirements and with state and federal agreements, the authority

shall comply with all applicable environmental laws and regulations. Nothing in this act is intended to amend, modify, or alter the jurisdiction or authority of the Department of Fish and Game or the provisions of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) or any other state or federal laws whose purpose is to protect and preserve the natural environment.

421. In furtherance of its purposes, the authority may apply for and receive state and federal grants, loans, and other funding.

422. The authority may charge and each appointing authority shall pay the authority an amount sufficient to fund administrative costs associated with the operation of the authority, including, but not limited to, the costs of meeting notices, agendas, and other administrative functions.

423. Each local agency that includes territory within the Pajaro River Watershed shall notify the authority before undertaking any flood prevention and control activities, programs, and projects within that watershed.

PART 3. FINANCIAL PROVISIONS

CHAPTER 1. GENERAL FINANCIAL PROVISIONS

501. The authority may, in any year, levy assessments, reassessments, or special taxes and issue bonds to finance projects in accordance with, and pursuant to, the Improvement Act of 1911 (Division 7 (commencing with Section 5000) of the Streets and Highways Code), the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code), the Municipal Improvement Act of 1913 (Division 12 (commencing with Section 10000) of the Streets and Highways Code), the Benefit Assessment Act of 1982 (Chapter 6.4 (commencing with Section 54703) of Part 1 of Division 2 of Title 5 of the Government Code), the Integrated Financing District Act (Chapter 1.5 (commencing with Section 53175) of Division 2 of Title 5 of the Government Code), the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code), and the Marks-Roos Local Bond Pooling Act of 1985 (Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1 of the Government Code).

502. Notwithstanding the provisions of any assessment act that the authority is authorized to use, any assessment diagram that any of those acts requires to be prepared prior to final approval of the authority need show only the boundaries of any assessment zones within the authority. The diagram may refer to the county assessor's maps and records for a detailed description of each lot or parcel.



503. (a) Notwithstanding any other provision of law, the authority may levy and collect assessments and reassessments in the same manner as provided in Article 3 (commencing with Section 51320) of Chapter 2 of Part 7 of Division 15 of the Water Code, for any or all of the following purposes:

(1) For the operation and maintenance of projects of the authority.

(2) For the satisfaction of liabilities arising from projects of the authority.

(3) For the administration costs of the authority.

(4) To accumulate a fund that may be used to advance the cost of projects of the authority. However, the advances shall be repaid, with interest as determined by the board, from assessments, reassessments, special taxes, or fees charged by the authority pursuant to this act.

(b) For purposes of this section, the board shall perform all the functions assigned by Article 3 (commencing with Section 51320) of Chapter 2 of Part 7 of Division 15 of the Water Code to the board of supervisors or the board of trustees.

(c) For purposes of this section, the board may order the creation of a separate assessment roll to pay the allowable expenses of any single project or any group or system of projects.

(d) An assessment, reassessment, or special tax may be imposed throughout the entire area of the authority, or within a portion of the area of the authority.

(e) The imposition of any assessment, reassessment, or special tax shall be in accordance with Articles XIII C and XIII D of the California Constitution.

504. Notwithstanding any other provision of law, Division 4 (commencing with Section 2800) of the Streets and Highways Code does not apply to any assessment levied by the authority.

505. (a) Notwithstanding any other provision of law, all assessments, reassessments, and special taxes levied by the authority may be collected together with, and not separately from, taxes for county purposes. Any county that is located within the authority shall collect, at the request of the authority, all assessments, reassessments, and special taxes levied by the authority and shall deposit those revenues with the trustee appointed pursuant to Section 801 to the credit of the authority.

(b) Each county may require that the amount to be collected be increased to include a proportionate amount of the county's reasonable collection and administrative costs, not to exceed ten dollars (\$10) per installment for each lot or parcel, as reimbursement for expenses incurred by the county in collecting the assessment, reassessment, or special tax, if that action is in accordance with Articles XIII C and XIII D of the California Constitution.

506. Notwithstanding any other provision of law, any assessment or reassessment levied pursuant to this act shall be apportioned on a reasonable basis, as determined by the board, which may be based on land use category, proportionate storm water runoff, relative hazard of flooding, or infrastructure protection.

507. Notwithstanding any other provision of law, the board may include within the authority's annual budget a general unappropriated reserve fund not to exceed 25 percent of the total appropriations included in the authority's budget, exclusive of all items for bond interest and redemption, and the general appropriated reserve. The reserve fund may be used for emergencies, replacements, or other lawful purposes of the authority.

CHAPTER 2. SPECIAL CAPITAL ASSESSMENTS

Article 1. Formation of Zones

601. As an alternative or in addition to any other power available to the authority, the authority may, in any year, levy and collect assessments and sell bonds pursuant to this chapter for any project, if that action is in accordance with Articles XIII C and XIII D of the California Constitution. These assessments shall be levied within any zone determined by the board to particularly benefit from a given project. Assessment areas may overlap.

602. Before undertaking any assessment pursuant to this chapter, the authority shall adopt a resolution declaring its intention to do so, briefly describing the proposed project, specifying the exterior boundaries of the area to be assessed, and providing for the issuance of bonds, if any. The resolution shall briefly describe any existing or intended contract with any other governmental agency to share in financing or performance of the work on the project. The resolution shall also direct an officer of the authority to prepare a report pursuant to Section 603.

603. The report shall include all of the following:

- (a) A general description of the project.
- (b) A name for the proposed assessment zone, which may be in the form "Pajaro River Watershed Flood Prevention Assessment Zone Number _____."
- (c) An estimate of the cost of the project. If part of the cost is expected to be paid from contributions from other governmental agencies, the report shall include an estimate of the expected total amount of those contributions.
- (d) A plan for financing the project, including a brief description of the principal amount and maturities of any proposed bonds, and of any reserve or other special funds required. The plan shall include estimates of the annual revenue needed to pay debt service on bonds

and to pay any other expenses arising in conjunction with the project, including any amounts needed to replenish reserve or other special funds.

(e) A specification of a method for annually apportioning the estimated annual costs of the project among the parcels in the area to be assessed, and a method for determining the rate of assessment. The apportionment shall be in proportion to the benefit received by each parcel, as determined pursuant to Section 506. The specification shall be in sufficient detail to allow any property owner within the district to determine the annual amount that he or she would have to pay.

604. When the report is filed with the authority, the board may at a public meeting, tentatively approve the report and schedule a hearing on it not earlier than 30 days and not later than 90 days after the date on which the report is tentatively approved. The hearing may be continued for a period not to exceed six months. Notice of the hearing shall be published pursuant to Section 6066 of the Government Code in a newspaper of general circulation in the area proposed to be assessed, and the first publication shall occur not later than 20 days before the date of the hearing. The notice to be published shall be entitled "Notice of Flood Prevention Assessment Hearing" and shall include all of the following:

(a) The time and place of the hearing on the proposed assessments and bonds.

(b) A general description of the proposed project and the area proposed to be assessed.

(c) A statement that the authority is considering levying annual assessments on lots or parcels of property within the area of the proposed zone to pay for the project.

(d) A statement, if applicable, that the authority is considering issuing bonds to finance the local share of the cost of the proposed project.

(e) The name and telephone number of an employee of the authority from whom a copy of the report can be obtained and who can answer questions concerning the project and the hearing. The authority may charge the reasonable costs of reproduction for copies of the report, and shall make copies available for free public inspection at one or more public places within the area proposed to be assessed.

606. Upon approval in accordance with Articles XIII C and XIII D of the California Constitution, and if the board determines to proceed with the levy and collection of assessments and, if applicable, the sale of bonds, it shall adopt a resolution confirming the report, as modified, and ordering the levy of the assessments and, if applicable, the sale of bonds.

607. (a) Upon adopting a resolution pursuant to Section 606, the authority shall record a notice of assessment whereupon the assessment shall attach as a lien on the property assessed.

(b) From the date of the recordation of the notice of assessment, each special assessment levied under this chapter is a lien on the land on which it is levied. This lien is paramount to all other liens, except prior assessments and taxation. Unless sooner discharged, the lien continues for 10 years from the date of the recordation or, if bonds are issued to represent the assessment, until four years after the date on which the last installment on the bonds or the last principal coupon attached to the bonds is due. All persons have constructive notice of this lien from the date of the recordation.

Article 2. Levy and Collection of Assessments

701. The validity of any assessment levied or bond issued under this chapter shall not be contested in any action or proceeding unless the action or proceeding is commenced within 60 days after the assessment is levied pursuant to Section 606. Any appeal from a final judgment in such an action or proceeding shall be perfected within 30 days after the entry of judgment.

702. An action to determine the validity of any assessment or bonds pursuant to this chapter may be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure. In any such action, all findings of fact or conclusions of the board upon all matters shall be conclusive unless the action was instituted within 30 days after the findings or conclusions were made.

703. After one or more zones have been created by the authority for the purpose of imposing assessments pursuant to this chapter, the board may, by resolution, provide for the levy of the assessments using the method for apportioning the assessment and for setting the rate of the assessment as set out in the report confirmed pursuant to Section 606. The clerk of the authority shall file a list of all parcels subject to assessments levied pursuant to this chapter and the amount of the assessment or assessments levied against each parcel, with the county auditor on or before August 10 of each tax year. The assessments shall be collected in the same manner as ordinary property taxes are collected and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ad valorem taxes.

704. (a) In the event of nonpayment of any assessment levied pursuant to this chapter, and not later than four years after the due date of the last installment of principal, as a cumulative remedy, the amount when due and delinquent may, by order of the board, be collected pursuant to an action brought in the superior court to foreclose the lien.



(b) The lien of an assessment levied pursuant to this chapter on tax-deeded land may be foreclosed in the same manner as the foreclosure of other real property. The action shall be brought in the name of the authority.

(c) The costs of the action shall be fixed and allowed by the court and shall include reasonable attorney's fees, interest, penalties, and other charges and advances as provided by this chapter. The costs shall be included in the judgment. The amount of penalties, costs, and interest due shall be calculated up to the date of judgment.

(d) The court may adjudge and decree a lien against the lot or parcel of land covered by the assessment for the amount of the judgment and may order the premises to be sold on execution as in the sale of other real estate by the process of the court, with the same rights of redemption.

(e) The board may, by resolution adopted prior to the issuance of bonds, covenant for the benefit of bondholders to commence and diligently prosecute to completion any foreclosure action regarding delinquent installments of any assessments or reassessments that secure the bonds that are to be issued, or to employ a trustee to do so on behalf of the bondholders.

Article 3. Bonds

801. The board may sell bonds or notes of the authority to finance projects as set out in the report confirmed pursuant to Section 606. The board shall authorize the issuance of bonds by adoption of a resolution which provides for all of the following:

(a) The denominations, form, and registration provisions of the bonds.

(b) The manner of execution of the sale of the bonds.

(c) The par amount of the bonds to be sold.

(d) The appointment of one or more banks or trust companies within the state having the necessary trust powers as trustee, fiscal agent, paying agent, or bond registrar.

(e) The execution of a document or indenture securing the bonds.

(f) The pledge or assignment of the designated assessment revenues to the repayment of the bonds.

(g) The interest rate to be borne by the bonds.

(h) Any other terms and conditions determined to be necessary by the board.

802. The bonds shall be signed by the chairperson of the board, and countersigned by the trustee. The bonds may be authenticated by a paying agent selected by the board, and the signatures of the chairperson and trustee may be facsimile signatures. If any officer whose signature appears on the bonds ceases to be an officer at any time, the signature shall nevertheless be valid and sufficient for all purposes.

803. The board may sell bonds pursuant to this chapter at public or private sale at not less than 95 percent of par value. The proceeds of the sale of the bonds shall be placed on deposit with the trustee to the credit of the authority and the issuing assessment district, and the proper records of the transaction shall be placed upon the books of the authority. The bond proceeds shall be used exclusively to finance or refinance projects and to pay incidental expenses pursuant to the report confirmed pursuant to Section 606.

804. The board may include in the aggregate principal amount of the bonds to be issued an amount for a reserve fund for the payment of the bonds. The amount to be included for the reserve fund shall not exceed the amount permitted by law. The reserve fund and all interest earned on it shall either be used for the payment of debt service on the bonds, if there is a deficiency, and then only to the extent of the deficiency, or the funds may be transferred to the redemption fund for the bonds for advance or final retirement of the bonds. Notwithstanding any provision of this section, the amount and disposition of the reserve fund may conform to the provisions of the Internal Revenue Code or the regulations of the United States Department of the Treasury.

805. Any bonds or notes issued pursuant to this chapter may be refunded when and to the extent necessary as determined by the board.

PART 4. TERMINATION

Article 1. Repeal

901. If all of the following events occur, as described below, this act shall become inoperative on July 1, 2000, and, as of January 1, 2001, is repealed, unless a later enacted statute that is enacted before January 1, 2001, deletes or extends the dates on which it becomes inoperative and is repealed:

(a) The entities described in Section 301 attend regularly scheduled meetings for the purposes of subdivisions (b) and (c).

(b) Both of the following occur on or before December 31, 1999:

(1) All entities described in Section 301 enter into a memorandum of understanding that provides for the identification, evaluation, funding, and implementation of flood prevention and control strategies in the Pajaro River Watershed on an intergovernmental, cooperative basis.

(2) The memorandum described in paragraph (1) is submitted to the Chief Clerk of the Assembly and the Secretary of the Senate.

(c) On or before June 30, 2000, both of the following occur:

(1) A joint powers agency is formed as authorized under Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, pursuant to a joint powers agreement entered

into by all entities described in Section 301, for the purpose of accomplishing the objectives listed in paragraph (1) of subdivision (a).

(2) Evidence of the formation of a joint powers agency pursuant to paragraph (1) is submitted to the Chief Clerk of the Assembly and the Secretary of the Senate.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

